IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2054 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABABHAI MADHAVLAL PATEL

Versus

DIRECTOR OF AGRICULTURAL CAMPUS

Appearance:

1. Special Civil Application No. 2054 of 1999

MR PK JANI for Petitioner No. 1

MR SA DESAI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has made a grievance in this petition that though all throughout during his span of service, he has worked as Teacher. He has been made to

retire at the age of 58 years and not at the age of 60 years which is the age meant for retirement of the teachers. His grievance is that despite having made repeated request, his case has not been properly considered by the respondents and they have turned down his request causing him grave injustice. He has, therefore, approached this Court for seeking reliefs which have been adequately prescribed in Clauses (A), (B) & (C) in paragraph 26 of the petition.

1.1. The petitioner was born on 11th March, 1941. By order dated 24th July, 1964, under the signature of Director, Institute of Agriculture, Anand, he was appointed as Lecturer in Dairy Engineering on the establishment of Dairy Science College. The said appointment was purely on temporary basis and he was placed in the grade of 210-10-300/- with usual Dearness allowance permissible to other staff members. Subsequently, vide order dated 2nd May, 1972, he came to be confirmed on the said post and on 17th May, 1974, he came to be promoted as Assistant Professor. Promotion was granted provisionally in the payscale of Rs.350-850/and it was subject to the regularization by interview before a Selection Committee. Later on, on 23rd February, 1978, he was confirmed on the post of Assistant Professor. He continued to serve on the said post. In the month of September, 1995, the respondent University published the list of employees who were to retire between 1st December, 1996 and 31st December, 2000. In the said list, the petitioner's name was not there. However, by letter dated 3rd February, 1999, petitioner was intimated by the Director, of the Agricultural, Campus that the petitioner would retire with effect from 31st March, 1999. Similarly, the Principal of the Dairy Science College, Anand also intimated the petitioner vide letter dated 15th February, 1999 that he would retire with effect from 31st March, 1999. Within three days i.e. on 18th February, 1999, the petitioner made representation to the Director of Agricultural Campus i.e. respondent no. 1 and also to respondent no. 3 Registrar of Gujarat Agricultural University. On 20th February, 1999, the petitioner's representations was not granted by the respondents and, therefore, the petitioner was ultimately constrained to approach this Court by way of this petition.

1.2. The petition appears to have been filed sometime in the middle of 1999 and, therefore, the petitioner had, prayed that he was required to be continued in service till he attained the age of 60 years. While admitting the petition, this Court [Coram : Miss R.M. Doshit, J.]

vide order dated 24th March, 1990, observed as under :-

"2. Once the petitioner has been ordered to retire from service on his attaining the age of 58 years, I do not consider it expedient to grant ex-parte ad-interim order continuing the petitioner in service even after he reaches the age of 58 years. The question of grant of interim relief can be considered after hearing the respondents and no prejudice shall be caused to the petitioner if pending hearing of notice, he retires from service in accordance with the impugned order. Ad-interim relief is, therefore, refused."

2. The petitioner, in the meanwhile, during the pendency of the petition was retired from service and, therefore, this petition is now required to be decided on the question whether the petitioner ought to have been retired on that age or at the age of 60 years as requested by him.

3. Having heard Mr. P.K. Jani learned advocate appearing for the petitioner and Mr. S.A. Desai learned advocate appearing for the respondents and having carefully considered the record of this petition, it clearly appears that the petitioner right from the beginning was appointed on the teaching side of the institution. The first appointment is dated 24th July, 1964, which relates to his appointment as Lecturer in Dairy Science College in the grade of Rs.210-10-300/-. Though it was purely on temporary basis at that time, he was subsequently confirmed on the said post vide order dated 2nd May, 1972 and subsequently he was promoted on the post of Assistant Professor in the month of May, 1974 and also confirmed on the said post in the month of February, 1978. In the meanwhile, the Gujarat Agriculture University came into existence on 1st June, 1974. Thus, it is obvious that the petitioner was appointed as a teacher in the respondent - University. The word "Teacher" is adequately defined in Section 2 (17) of the Gujarat Agricultural University Act, 1969 which reads as under :-

"2(17). "Teacher" means a person appointed or recognized as such by the University for the purpose of imparting instructions or conducting and guiding research or education extension programs and includes any other person who may be declared by the Statues to be a teacher."

In new provisions of the Gujarat Agricultural University First Statute, details of designations are given. It is provided that, teachers shall be designated as under :-

(1) Principals.

(2) University Professors.

(3) Associate Professors.

(4) Assistant Professors.

(5) Instructors/ Lecturers.

(6) Research Scientists.

(7) Associate Research Scientist.

(9) Research Assistants.

(10) Extension Educationists.

(11) Associate Extension Educationist.

(12) Assistant Extension Educationist.

(13) Extension Education Assistants.

Thus, in both the capacities, i.e. in the capacity of Lecturer and in the capacity of Assistant Professor, petitioner could be termed as a "Teacher".

3.1. The respondents have contested this petition by filing affidavit-in-reply and their stand appears to be that since the petitioner was not holding qualifications as prescribed by the University Grants Commission, he was not granted the payscale as prescribed by the University Grants Commission and as adopted by I.C.A.R. and the State Government, but he was being granted the payscale prescribed by the State Government for non-teaching staff of the University. In view of this fact, the defence of the respondents is that since he was given the payscale of non-teaching staff, he was to be considered as non teaching staff where the retirement age is 58 years. In Rule 14.1 of the Gujarat Agricultural University Employees (Service) Rules, the age of compulsory retirement is prescribed, which reads as under:-

"14.1. The date of compulsory retirement of a University employee shall be the date on which he

attain the age indicated below :-

1.	Officers	58 years
2.	Teachers	60 years
3.	Other employees except employees whose minimum starting pay is more than Rs.130/- p.m.	58 years
4.	Other employees whose minimum starting pay is less than Rs.130/- p.m.	60 years

3.2. The respondents have, therefore, treated the petitioner in III category of Rule 14.1 and has held that age of compulsory retirement of the petitioner would be 58 years and that he has been retired at that age. This stand of the respondents does not appear to be legal and proper. When the petitioner had been appointed as Lecturer in the year 1964, and since he had been rendering service as member of the teaching staff in the respondent university, and when he was not only confirmed on the post of Lecturer but subsequently promoted to the post of Assistant Professor, initially on provisional basis, but later on he was also confirmed on that post, it can never be member of non teaching staff. All throughout his career, the petitioner has been working in the teaching faculty and doing nothing else. It is a matter of surprise that on the basis of payscale, he is now sought to be placed in the category of non teaching staff. When he had been working as teacher even on that payscale, he worked as teacher alone and he did not belong to any other branch of the teaching institute. In other words, he did not become member of the non-teaching staff. May be for that for some reason or the other, the respondents might have thought it fit not to grant U.G.C. scale to him. According to the respondents because of the non fulfillment of the qualification required by the U.G.C. he was not entitled to have payscale of teacher. However, it would not mean that he is ceased to be teacher. The aforesaid provisions with regard to Teacher and the different designations on the teaching side would clearly show that he is a "Teacher" and none else. If he was a teacher then naturally, his age of retirement would be 60 years as prescribed under the Gujarat Agricultural University Act. The decision of respondents, therefore, was absolutely wrong. The communications which have been addressed to the petitioner dated 3rd February, 1999 and 15th February, 1999 are required to be quashed and set

aside and they are hereby ordered to be quashed and set aside. It is hereby declared that under Rule 14.1 the age of compulsory retirement was 60 years. Since the petitioner has been retired at the age of 58 years in the month of March, 1999, there is erroneous interpretation of the concerned Rule by the respondents. Even if he had put in continuous service upto the age of 60 years, he would have retired in the month of March, 2001. Today, therefore, no relief for reinstatement can be granted. The respondents can be directed to treat the petitioner in service as if his age of retirement was 60 years and to pay to him all the monetary benefits that would have been made available to him between the period March, 1999 and March, 2001, the same shall include his salary, Dearness allowance, and whatever permissible perquisites allowances which are made available to the others to which he would have been otherwise entitle to be paid to him. Further that whatever retiral benefits which have been at present fixed for the petitioner will have to be revised on the basis that he would have retired not in the month of March, 1999, but in the month of March, 2001. This exercise to be carried out as early as possible but not later than 31st August, 2004.

With the aforesaid direction, the petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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